

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

PAVEL KISLYAK,	)	4:12CV3025
	)	
Petitioner,	)	
	)	
v.	)	MEMORANDUM
	)	AND ORDER
WILLIAM GIBSON, Chief Executive	)	
Officer of the Lincoln Regional	)	
Center,	)	
	)	
Respondent.	)	

This matter is before the court on its own motion. On September 21, 2012, the court dismissed Petitioner Pavel Kislyak's Petition for Writ of Habeas Corpus with prejudice and entered Judgment against him. (Filing Nos. [17](#) and [18](#).) On December 6, 2012, Petitioner filed a Notice of Appeal. (Filing No. [19](#).)

[Federal Rule of Appellate Procedure 4\(a\)\(1\)](#) requires that the notice of appeal in a civil case be filed within thirty days after the judgment or order appealed from is entered. “A timely notice of appeal is both mandatory and jurisdictional.” [Burgs v. Johnson Cnty., Iowa, 79 F.3d 701, 702 \(8th Cir 1996\)](#). Moreover, an untimely notice of appeal cannot serve as a motion for extension of time to file appeal. [Id.](#) However, the district court may extend the time to file a notice of appeal if a party moves for an extension of time and shows excusable neglect or good cause. [Fed. R. App. P. 4\(a\)\(5\)\(A\)\(ii\)](#).

Petitioner filed his Notice of Appeal more than 30 days after the court's September 21, 2012, Memorandum and Order. (See Docket Sheet.) Moreover, Petitioner did not move to extend the time to file a notice of appeal in this matter. (*Id.*) However, on the court's own motion, Petitioner shall have until January 10, 2013, to file an affidavit to show excusable neglect or good cause for failing to file a timely notice of appeal. If Petitioner fails to submit such an affidavit, or fails to show good cause, Petitioner's appeal will not be processed.

In addition, Petitioner failed to submit the \$455.00 appellate filing fee or a motion to proceed in forma pauperis ("IFP"). (See Docket Sheet.) Because the court is providing Petitioner with the opportunity to show excusable neglect or good cause for failing to file a timely notice of appeal, the court will also provide Petitioner until January 10, 2013, to submit the \$455.00 appellate filing fee, or a motion to proceed IFP. If Petitioner fails to submit the appellate filing fee or a motion to proceed IFP, Petitioner's appeal will not be processed.

IT IS THEREFORE ORDERED that:

1. Petitioner shall have until January 10, 2013, to submit an affidavit to show excusable neglect or good cause for failing to file a timely notice of appeal. If Petitioner fails to submit such an affidavit by January 10, 2013, Petitioner's appeal will not be processed;
2. Petitioner shall have until January 10, 2013, to submit either the \$455.00 appellate filing fee or a motion to proceed IFP, with the required affidavit. If Petitioner fails to submit the fee or a motion and affidavit, Petitioner's appeal will not be processed; and
3. The Clerk of the court is directed to set a pro se case management deadline in this case using the following text: Check for affidavit and filing fee on January 10, 2013.

DATED this 13<sup>th</sup> day of December, 2012.

BY THE COURT:

s/Laurie Smith Camp  
Chief United States District Judge

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